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In re Application of :  
ALBY, Albert :  
U.S. Application No.: 09/380,614 :  
PCT No.: PCT/FR98/00543 :  
International Filing Date: 18 March 1998 :  
Priority Date: 18 March 1997 :  
Attorney's Docket No.: JEK/Alby :  
For: IMPLANT FOR OSTEOSYNTHESIS DEVICE :  
AND TOOL FOR SETTING SUCH IMPLANT :  
: DECISION ON  
: PETITION UNDER  
: 37 CFR 1.182

This decision is issued in response to applicant's "Communication And Petition Under 37 CFR 1.182" filed 14 August 2003 via facsimile submission seeking to correct the international application referenced in the Form 1390 Transmittal Letter here from PCT/EP98/00543 to PCT/FR98/00543. Deposit Account No. 02-0200 will be charged the required petition fee.

**BACKGROUND**

On 18 March 1998, applicant filed international application PCT/FR98/00543 which claimed a priority date of 18 March 1997 (based on French application number 97/03277) and which designated the United States. On 24 September 1998, a copy of the international application was communicated to the United States Patent And Trademark Office ("USPTO") by the International Bureau ("IB").

A Demand was filed with the International Preliminary Examining Authority electing the United States prior to the expiration of nineteen months from the priority date. As a result, the deadline for payment of the basic national fee was extended to expire thirty months from the priority date, i.e., 18 September 1999.

On 17 September 1999, applicant filed a transmittal letter for entry into the national stage in the United States accompanied by, among other materials, payment for the basic national fee and a translation of international application PCT/FR98/00543 into English. However, the Form 1390 Transmittal Letter filed by applicant identified the international application as PCT/EP98/00543.

Based on the Form 1390 Transmittal Letter filed by applicant, this application file was set up in USPTO records as a national stage of PCT/EP98/00543.

On 10 December 1999, the DO/EO/US mailed a Notification Of Missing Requirements (Form PCT/DO/EO/905) indicating that an executed oath or declaration in compliance with 37 CFR 1.497 and the surcharge for filing the declaration later than thirty months after the priority date were required.

07 January 2000, applicant filed a response to the Notification Of Missing Requirements including payment of the required surcharge and a declaration executing international application PCT/FR98/00543.

On 02 February 2000, the DO/EO/US mailed a Notification Of Acceptance (Form PCT/DO/EO/903) indicating that applicant had satisfied the requirements of 35 U.S.C. 371 as of 07 January 2000. The Notification identified the international application as PCT/EP98/00543. Subsequently, a filing receipt was issued.

On 18 February 2000, applicant filed a "Request For Corrected Filing Receipt" which asserted that the filing receipt was incorrect in that it listed the wrong title and priority information (the information listed was taken from PCT/EP98/00543).

On 05 May 2000, a new filing receipt was issued in which the title had been changed to the title of PCT/FR98/00543. However, the continuing data still referred to PCT/EP98/00543 and the reference to the priority application was incorrect (the application number listed was now the number of the French priority application claimed in PCT/FR98/00543, but the application was still identified as Japanese).

On 09 June 2000, applicant filed a "Second Request For Corrected Filing Receipt" again requesting correction of the priority information.

On 14 August 2003, applicant filed the petition considered herein seeking to correct the original reference to PCT/EP98/00543 and have the present application file corrected to be a national stage application for PCT/FR98/00543.

### DISCUSSION

The present petition asserts that the Form 1390 Transmittal Letter filed 17 September 1999 contained a typographical error in the listed international application. Specifically, the international application, listed as PCT/EP98/00543, was intended to read PCT/FR98/00543. As applicant notes in the petition, the intended application was identified in that the inventor, title, priority date, and international filing date for the intended application (PCT/FR98/00543) were present on the Transmittal Letter. In addition, the original submission was accompanied by a translation of the intended application, PCT/FR98/00543, and an unsigned declaration that referred to PCT/FR98/00543. The petition is accompanied by a corrected version of the Form 1390 Transmittal Letter that properly identifies the international application.

Based on applicant's statements, the submission of the corrected Form 1390, and the payment of the \$130 petition fee, applicant's petition to correct the Form 1390 Transmittal Letter is granted. Based on this correction, this application file will now be treated as a national stage of international application PCT/FR98/00543.

Based on this correction, the Notification Of Acceptance mailed 02 February 2000 and the filing receipt, both of which refer to international application PCT/EP98/00543, are appropriately vacated.

### CONCLUSION

Applicant's petition under 37 CFR 1.182 is **GRANTED**.

The present application will be treated as a national stage of international application PCT/FR98/00543.

The Notification Of Acceptance mailed 02 February 2000 and the subsequently issued filing receipt are hereby **VACATED**.

This application is being forwarded to the National Stage Processing Branch of the Office Of PCT Operations for further processing in accord with this decision, including: (1) updating USPTO records to indicate that this application is a national stage of PCT/FR98/00543; (2) issuance of a corrected Notification Of Acceptance properly identifying the international application as PCT/FR98/00543 (the 35 U.S.C. 371 date remains 07 January 2000); and (3) issuing a corrected filing receipt that correctly identifies this application as a 35 U.S.C. 371 national stage of PCT/FR98/00543 and properly identifies the priority application as French application number 97/03277, filed 18 March 1997.



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